

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 21, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROMAN S. DE'LA CRUZ,

Plaintiff,

v.

AIMEE MAURER, individual capacity,

PATRICK JOHNSON, individual

capacity, JEFFREY SMITH, individual

capacity, JENNY ZAPPONE, individual

capacity, PATTY CONNOLLY

WALKER, individual capacity,

JENNIFER FASSBENDER, individual

capacity, ANDREW BIVIANO, individual

capacity, and RICHARD LELAND,

individual capacity,

Defendants.

No. 2:23-CV-00252-SAB

ORDER DISMISSING ACTION
28 U.S.C. § 1915(e)

Before the Court are *pro se* Plaintiff's Motion for Appointment of Pro Bono Counsel, ECF No. 5, and Motion Under 28 U.S.C. § 1915 for the Court to Serve Process on Defendants, ECF No. 6. Plaintiff represents himself *pro se*. Having considered the complaint, the motions, and relevant caselaw, the Court denies both motions as moot. Additionally, Plaintiff's Complaint, ECF No. 1, is **DISMISSED**

ORDER DISMISSING ACTION # 1

1 with prejudice because the Complaint is frivolous, fails to state a claim upon which
2 relief may be granted, and seeks monetary relief against a defendant who is
3 immune from such relief. 28 U.S.C. § 1915(e).

4 Pursuant to 28 U.S.C. § 1915(e), the Court must dismiss a Complaint prior
5 to service if it is (i) frivolous or malicious; (ii) fails to state a claim on which relief
6 may be granted; or (iii) seeks monetary relief against a defendant who is immune
7 from such relief.

8 Here, Plaintiff is alleging that state court judges violated federal law under
9 Article 6, Section 2 of the United States Constitution and Federal Racketeering and
10 the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §
11 1961–68, for “taking illegal money from [Spokane] county.” He alleges a 2018
12 judgment against him in Spokane County should be overturned because the judge
13 in the case was biased in favor of the County, which has caused him emotional
14 distress and reputation damage.

15 RICO Claim

16 A RICO claim requires plaintiff prove at a minimum that defendant engaged
17 in a “pattern of racketeering activity or collection of unlawful debt.” *See* 18 U.S.C.
18 § 1962; *Chisum v. Vasquez*, No. CIV. 02-0799, 2003 WL 1950234, at *3 (D.D.C.
19 Mar. 21, 2003).

20 Plaintiff’s Complaint alleges conduct that, on its face, appears lawful. He
21 alleges it is illegal for Spokane County judges’ salaries to be paid by Spokane
22 County, Compl. at 7, but Washington State law regulates and allows for such
23 disbursements. *See* WASH. CONST. art. 28 § 1; RCW 3.58.010. Further, Plaintiff
24 alleges the judges of Spokane County have a “constitutional conflict of interest
25 because money collected from fines, fees, and the bail bond process imposed on
26 defendants goes to subsidize their court operations.” Compl. at 6. Plaintiff does not
27 explain what law or right this violates other than his Due Process rights. He also
28 fails to show how the individually named judges violated any law in these

1 allegations. Finally, he does not point to the sources he used in gathering the
2 evidence for his allegations.

3 By hearing cases involving Spokane County as a party, the Defendants have
4 not acted in such a way as to show any impropriety in their actions or a conspiracy
5 to participate in a racketeering operation. Plaintiff has failed to state a claim on a
6 RICO allegation for which he can recover.

7 **Section 1983**

8 Section 1983 requires a claimant prove that (1) a person acting under
9 color of state law (2) committed an act that deprived the claimant of some right,
10 privilege, or immunity protected by the Constitution or laws of the United States.
11 *Leer v. Murphy*, 844 F.2d 628, 632–33 (9th Cir. 1988). “A person deprives another
12 of a constitutional right, within the meaning of section 1983, if he does an
13 affirmative act, participates in another’s affirmative acts, or omits to perform an act
14 which he is legally required to do that causes the deprivation of which [Plaintiff]
15 complains.” *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1439 (9th Cir. 1991).

16 Plaintiff alleges his Fourteenth Amendment Due Process rights were
17 violated by the Defendants alleged racketeering actions. As explained above, his
18 allegations fail to state a claim upon which relief can be granted.

19 **Absolute Immunity**

20 It is well settled that judges are generally immune from civil liability under
21 Section 1983. *Mireles v. Waco*, 502 U.S. 9, 9–10 (1991) (citing long line of cases
22 acknowledging that “generally, a judge is immune from a suit for money
23 damages”). “Although unfairness and injustice to a litigant may result on occasion,
24 ‘it is a general principle of the highest importance to the proper administration of
25 justice that a judicial officer, in exercising the authority vested in him, shall be free
26 to act upon his own convictions, without apprehension of personal consequences to
27 himself.’” *Id.* at 10 (citation omitted). Only two circumstances can overcome
28

1 judicial immunity: (1) for actions not taken in the judge's judicial capacity; and (2)
2 for actions, though judicial, taken absent any jurisdiction. *Id.* at 11–12.

3 Here, Plaintiff has not alleged any facts that would eliminate judicial
4 immunity for the named-Defendants. As such, the Complaint must be dismissed
5 pursuant to § 1915(e).

6 **Opportunity to Amend or Voluntarily Dismiss Complaint**

7 Unless it is absolutely clear that amendment would be futile, a pro se litigant
8 must be given the opportunity to amend his complaint to correct any deficiencies.
9 *Aktar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). Here, since Plaintiff is suing
10 state court judges who are afforded judicial immunity, any amendment to his
11 Complaint would be futile. As such, Plaintiff will not be permitted to file an
12 Amended Complaint.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Appointment of Pro Bono Counsel, ECF No. 5,
15 is **DENIED** as moot.

16 2. Plaintiff's Motion for the Court to Serve Process on Defendants, ECF
17 No. 6, is **DENIED** as moot.

18 3. The complaint, ECF No. 1, is **DISMISSED with prejudice.**

19 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to file
20 this Order, provide a copy to *pro se* Plaintiff and **close** the file.

21 **DATED** this 21st day of September 2023.



26 

27 Stanley A. Bastian
28 Chief United States District Judge